IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5475 of 2007()

PETITIONER/ ACCUSED NO.5

CHERUMALA ABDULLA, S/O. ABOBBACKER
KUTTATHI, KARUVARAKUNDU
MALAPPURAM DISTRICT

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED
BY THE SUB INSPECTOR OF POLICE
VENGARA POLICE STATION
THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5475 of 2007

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Dated this the 11th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 5th accused. He along with co-accused faces allegations under Sec.420 IPC. The crux of the allegations is that the accused persons induced the de facto complainant to believe that gold at lesser than market rates shall be sold to the de facto complainant. The petitioner represented that the gold to be sold comes out of a treasure which was obtained by a person. Believing that representation, the de facto complainant allegedly parted with an amount of Rs.2 lakh. In return, he was given spurious metal and not gold. The petitioner, it is alleged, was responsible for handing over the spurious metal.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The name of the petitioner is not shown in the F.I.Statement at all. He has been brought to the array of accused subsequently. It is hence prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that a wrong name was given by the petitioner fraudulently at the time of the transaction. This is a

not fit case where the invocation of the extraordinary equitable discretion under Sec.438 can or ought to be made in favour of the petitioner. This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. There are no features in this case suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course.

5. In the result, this petition is dismissed. Need less to say that if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj